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8 File No. 11-04501

9 Attorneys for Secured Creditor,
10 BANK OF AMERICA, N.A.

11 **UNITED STATES BANKRUPTCY COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13 **SACRAMENTO DIVISION**

14 IN RE:

15 JOANNE M. VONDRACEK,

16 DEBTOR.

Case No.: 11-44032 E-13
Chapter 13
DC No. MW-5

Confirmation Hearing –
Date: December 20, 2011
Time: 02:00 P.M.
Place: U.S. BANKRUPTCY COURT
501 I Street
Sacramento, CA 95814
Courtroom 33, Dept. E, 6th Floor

17 **OPPOSITION TO MOTION TO CONFIRM PLAN**

18 BANK OF AMERICA, N.A., Secured Creditor in the above-entitled Bankruptcy
19 proceeding, hereby submits the following Opposition to Motion to Confirm Plan proposed by
20 Debtor:

21 This Secured Creditor holds the Trust Deed on the Debtor's property generally described
22 as **6323 Forest Lane, Paradise, CA 95939** and legally described as:

23 SEE LEGAL DESCRIPTION ATTACHED HERETO AS **EXHIBIT "1"** AND
24 MADE A PART HEREOF.

1 Secured Creditor is the payee of a promissory Note dated March 30, 2006, in the
2 principal amount of \$183,200.00, which is secured by the above-referenced Deed of Trust. A
3 copy of said Note and Deed of Trust are attached hereto as **Exhibits "2" and "3"**.

4 As of October 6, 2011, the amount in default was \$58,175.88, representing monthly
5 payments and late charges due from June 1, 2008 through October 1, 2011; advances for taxes
6 and insurance, if any; and foreclosure costs and attorneys' fees incurred with respect to the
7 default.

8 Section 1325 of the Bankruptcy Code sets forth the requirements for confirmation of a
9 Chapter 13 Plan. Among other things, the Court must make a finding that the plan is feasible as
10 a condition to confirmation.

11 Here the Debtor has listed on Schedule I one primary sources of income from which he
12 intends to fund the plan – regular income from Self employment in the amount \$5,500.00.

13 The Plan all together fails to provide for Secured Creditor's claim and on going post
14 petition payments. To cure the actual pre-petition arrearages within 60 months, Secured Creditor
15 must receive \$969.60 per month from the Debtor through the Plan.

16 The proposed Chapter 13 Plan is not feasible. Therefore, the Plan cannot be confirmed.
17 11 U.S.C. §1325(a)(6). Attached hereto as **Exhibits "4" and "5"** are Debtor's Schedule I –
18 Income and Schedule J – Expenses, indicating that Debtor has excess income of only \$2,400.00
19 per month. The payment to Secured Creditor alone through Debtor's Chapter 13 Plan must be
20 \$969.60 per month.

21 CONCLUSION

22 Any Chapter 13 Plan proposed by Debtor must provide for Secured Creditor's claim and
23 eliminate the Opposition specified above in order to be reasonable and to comply with applicable

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1 provisions of the Bankruptcy Code. It is respectfully requested that confirmation of the
2 Debtor's proposed Chapter 13 Plan be denied and the case be dismissed.

3 WHEREFORE, Secured Creditor prays as follows:

4 (1) That confirmation of the proposed Chapter 13 Plan be denied.

5 (2) For dismissal of the Chapter 13 proceeding.

6 (3) For such other relief as this Court deems proper.

7 MILES, BAUER, BERGSTROM & WINTERS, LLP

8 Dated: 11/16/11

By: 

Brian H. Tran, Esq.
Attorney for Movant